

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

**DEVIN GRANDIS, and ADVANCED
POWER TECHNOLOGIES, LLC**

Plaintiffs,

v.

**BGIS GLOBAL INTEGRATED
SOLUTIONS US LLC, and BIFM JERSEY
TOPCO LIMITED**

Defendants.

CASE NO. 22-CV-61477-AHS

JUDGE RAAG SINGHAL

**DEFENDANT BGIS GLOBAL INTEGRATED SOLUTIONS US LLC'S SURREPLY IN
OPPOSITION TO PLAINTIFFS' MOTION TO ENFORCE SETTLEMENT
AGREEMENT AND FOR EXTENSION OF TIME**

Plaintiffs argue that on March 16, 2023, BGIS's attorney emailed a redlined draft settlement agreement (the "3/16 Draft") [Dkt. No. 52 at Exh. J], which constituted a settlement offer. [Reply¹ at pp. 2, 5.] Plaintiffs further argue that they subsequently expressed their unequivocal acceptance of the 3/16 Draft in Joint Motion #2 [Dkt. No. 48], purportedly filed *after* Plaintiffs received the 3/16 Draft. [*Id.*] But Plaintiffs' timeline is wrong—Plaintiffs filed Joint Motion #2 *two hours before* they received the 3/16 Draft. As demonstrated for the first time in Plaintiffs' Reply, Plaintiffs' entire argument to enforce the 3/16 Draft as the final settlement agreement is based on a knowing misrepresentation.

In relevant part, Plaintiffs argue the following:

... the representations of BGIS's counsel, Robert Port, made to the Court pursuant to . . . "Joint Motion #2" [DE 48], are fatal to BGIS's argument that the parties had not reached an enforceable settlement agreement. *BGIS' counsel made these*

¹ "Reply" refers to Plaintiffs' Reply to Defendants' Response in Opposition to Motion to Enforce Settlement Agreement and for Extension of Time. [Dkt. No. 55.]

representations in the filing made shortly after Plaintiff's acceptance of Defendant's offer for settlement. Notably, the form and substance of the settlement was prepared and conveyed by Attorney Port, on behalf of BGIS, *earlier* that same day.

* * *

After the essential terms for settlement had been agreed to on March 16, 2023, *later that same day*, it was unequivocally represented to the Court in Joint Motion #2 that "[t]he Parties **have reached an agreement on the material terms for settlement that will result in dismissal of this lawsuit**, and have **spent the past several weeks going back and forth finalizing the agreement**, and **reasonably believe** that a final and execution ready version of the agreement is **imminent**." See DE 48 at ¶3 (emphasis supplied). The Court accepted as true the assurances

[Reply at pp. 2 (emphasis added), 5 (italics emphasis added; other emphasis in original).]

According to Plaintiffs, the representations contained in Joint Motion #2—that the parties had agreed on the material terms—came "shortly *after* Plaintiff's acceptance" of the 3/16 Draft.

[*Id.* (emphasis added).] ***This is not the timeline of events.***

As shown in the figure below, Plaintiffs' counsel filed Joint Motion #2 on March 16, 2023 at 9:57 AM:

| | |
|---|---|
| U.S. District Court | |
| Southern District of Florida | |
| Notice of Electronic Filing | |
| The following transaction was entered by Haft, David on 3/16/2023 at 9:57 AM EDT and filed on 3/16/2023 | |
| Case Name: | Grandis et al v. BGIS Global Integrated Solutions US, LLC et al |
| Case Number: | 0:22-cv-61477-AHS |
| Filer: | Advanced Power Technologies, LLC Devin Grandis |
| Document Number: | 48 |

3/16/23 ECF Notification Email (highlighting added) (attached hereto as Exhibit 1). Mr. Port, however, did not transmit the 3/16 Draft to Plaintiffs' counsel until approximately two hours later at 12:14 PM:

| | |
|---------------------|---|
| From: | Robert Port |
| Sent: | Thursday, March 16, 2023 12:14 PM |
| To: | Weinstock, Jeffrey |
| Cc: | Michael Pascoe; _217856_00018_ Devin Grandis Opposing Counsel Communications |
| Subject: | BGIS Settlement Agreement Draft [IWOV-Cleveland.FID2174436] |
| Attachments: | BGIS-APT-Grandis - Bill of Sale_HLP.DOCX; BGIS - APT-Grandis - Settlement Agreement DRAFT_HLP.DOCX; BGIS-APT-Grandis-Settlement Agreement Draft_HLP CLEAN.pdf; Lease Amendment - 1500 Property LLC-BGIS_HLP.DOC |

Jeff,

Attached are redlined version of the latest draft agreements. As discussed, the client is still reviewing, but wanted to get you a preliminary copy for your review and comment. I've also included a "clean" version of the draft settlement agreement.

[Dkt. No. 52 at Exh. J (highlighting added).]

For Plaintiffs argument to make any sense, it is necessary that they received the 3/16 Draft before filing Joint Motion #2. Plaintiffs could not have agreed to all the material terms in the 3/16 Draft *before they ever received it*. But that is precisely what they now argue. The facts are: (i) the 3/16 Draft was not an offer because it was expressly "preliminary" and subject to client review, *id.*; (ii) Plaintiffs never "accepted" the 3/16 Draft because Plaintiffs filed Joint Motion #2 two hours before receiving the 3/16 Draft; (iii) Plaintiffs response to the 3/16 Draft was a counteroffer, [*see* Dkt. No. 52 at Exh. D (Plaintiffs' counsel: "If you commit to raise the payment to \$550,000, we will accept")]; and (iv) BGIS rejected that counteroffer.

CONCLUSION

For these reasons, the Court should deny Plaintiffs' Motion to Enforce Settlement Agreement.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on 9th day of May, 2023, a true and correct copy of the foregoing DEFENDANT BGIS GLOBAL INTEGRATED SOLUTIONS US LLC'S SURREPLY IN OPPOSITION TO PLAINTIFFS' MOTION TO ENFORCE SETTLEMENT AGREEMENT AND FOR EXTENSION OF TIME was filed via the CM/ECF system, which will serve a true and correct copy of the same to all attorneys of record.

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